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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 518

ANNIE MARY TIMMONS, *Petitioner*,

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION AND DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Respondents*.

BRIEF FOR RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

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OPINIONS BELOW

The opinions of the United States District Court of South Carolina and the Circuit Court of Appeals are set out in the Appendix of Petitioner's brief; both opinions passed on the question of remand of the condemnation action to the State Court.

JURISDICTION

Jurisdiction is based upon 28 USC 1254(1), but no grounds for granting the Writ of Certiorari are presented.

QUESTION PRESENTED

The sole question presented below was whether the case should have been removed to the federal courts.

STATUTES INVOLVED

The sole statute involved is 28 USC 1446 (a), (b), (d) and (e), Procedure for Removal. On appeal 28 USC 1447 (d) was cited as authority for the dismissal of the appeal.

STATEMENT

The South Carolina Tricentennial Commission, a body created by the General Assembly of South Carolina, commenced on June 6, 1969, an eminent domain proceeding in the Court of Common Pleas for South Carolina to take certain lands of the Petitioner pursuant to an act granting this Commission that power. The lands were being taken as a part of the Tricentennial exhibition site and for use as a park after 1970.

On June 10, 1969, Petitioner commenced an action in the same state court to enjoin the condemnation proceedings and test the constitutionality of the Act under which the Commission was proceeding. The state court ruled on all constitutional issues raised in that proceeding adversely to

the Petitioner and an appeal was taken to the Supreme Court of South Carolina.

Certain pre-trial proceedings thereafter took place in the condemnation action, and the Supreme Court of South Carolina on November 13, 1969, refused to stay the condemnation proceeding pending the appeal in the case testing the constitutionality of the Act and the proceedings.

On November 25, 1969, less than a week before the date set for the trial of the condemnation action, Petitioner filed a Petition for removal of the condemnation case to the United States District Court of South Carolina. (Appendix C, Petition)

The Commission, in a hearing on the same date before United States District Judge Donald S. Russell, moved to remand the case to the state trial court. On November 26, Judge Russell remanded the case to the state court (Appendix B, Petition).

Petitioner then appealed from Judge Russell's order to the United States Court of Appeals for the Fourth Circuit. On Respondents' motion to dismiss the appeal, that appeal was dismissed under 28 USC 1447 (d).

The condemnation action proceeded to trial in December and resulted in an award of $325,000 to the Petitioner; both proceedings (the equitable action testing the validity of the condemnation and the condemnation action) were appealed to the South Carolina Supreme Court which affirmed. An appeal to this court from that decision has been noticed by Petitioner. (No. 19074, South Carolina Supreme Court)

ARGUMENT

Petitioner's petition repeatedly refers to U. S. Treasury funds and the Open Space Land Program under the Housing and Urban Redevelopment Act.

No ruling on that Act was made during the trial, and there is nothing in the record in this proceeding or in the entire case record which relates to this Act. HUD funds

are being used in part for payment of these properties, but the only way HUD has been involved is the HUD requirement that the lands acquired with these federal funds be used "for park and recreational purposes, conservation of land and other natural resources, or historic or scenic purposes." (Record, injunctive proceeding, p. 60-61). The state act provided that land acquired with participating HUD funds be "used for park purposes." (Record, injunctive proceeding, p. 110)

Whether or not this act has been complied with is not involved in this proceeding, the sole issue being whether or not the case should have been removed.

As Judge Russell properly observed, the Petitioner selected the state court as the forum to test the validity of the proceedings, and that jurisdiction thereby became exclusive. Had she elected to test the act before a federal tribunal, that would have been her right, but the Petitioner elected otherwise.

The petition was defective in not making the lienholder a party, and this would also have been a basis for remand.

These were not the bases, however, for Judge Russell's ruling; the statute for removal sets 30 days as the time within which a petition for removal can be filed. There must be the requisite grounds, and Petitioner asserts that there is diversity of citizenship. Petitioner is a citizen of South Carolina, and the Commission is a part of the government of the same state.

But that is not the basis for the Court's remand of the case to the State Court; the 30-day requirement was not complied with, and Judge Russell had no course but to remand the case under 28 USC 1446. Such an order, is not appealable under 28 USC 1447 (d).

CONCLUSION

The reasons which Petitioner has cited for granting the writ involve issues not raised in this proceeding which was concerned with the sole issue of removal of the case to the

federal court; were Petitioner's procedure allowed, any litigant could avoid trial by shifting a case at the last moment to a federal court.

The procedure for removal prescribes time limits for this reason; those procedures not having been observed, there was no basis for removal, and the remand order was appropriate.

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